

AMENDED IN ASSEMBLY FEBRUARY 22, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1719

Introduced by Assembly Member Harkey
(Coauthor: Assembly Member Knight)

February 2, 2010

An act to add ~~Section 6377 to~~ and repeal Section 6377 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1719, as amended, Harkey. Sales and use taxes: exemption: business equipment.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. That law provides various exemptions from those taxes.

This bill would exempt from those taxes the sale of, and the storage, use, or other consumption in this state, of ~~business equipment purchased for business use in California by, a person engaged in business~~ *tangible personal property, as defined, purchased for use by a qualified person, as defined, primarily in any stage of manufacturing, processing, refining, fabricating, or recycling of property; in research and development; to maintain, repair, measure, or test specified property; and for use by a contractor purchasing that property as an agent or for the contractor's own account and subsequent resale for use in a construction contract, as specified.*

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and the Transactions and Use Tax Law authorizes districts, as specified, to impose transactions and use taxes in conformity with the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated in these laws. ~~Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.~~

~~This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill specify that this exemption does not apply to local sales and use taxes, transactions and use taxes, and specified state taxes.~~

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6377 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 6377. (a) There are ~~exempt~~ *exempted* from the taxes imposed
- 4 by this part the gross receipts from the sale of, and the storage,
- 5 use, or other consumption in this state of ~~business equipment~~
- 6 ~~purchased for use by a person engaged in business in California~~
- 7 ~~for use in that business.~~ *any of the following:*
- 8 (1) *Tangible personal property purchased for use by a qualified*
- 9 *person to be used primarily in any stage of the manufacturing,*
- 10 *processing, refining, fabricating, or recycling of property,*
- 11 *beginning at the point any raw materials are received by the*
- 12 *qualified person and introduced into the process and ending at*
- 13 *the point at which the manufacturing, processing, refining,*
- 14 *fabricating, or recycling has altered property to its completed*
- 15 *form, including packaging, if required.*
- 16 (2) *Tangible personal property purchased for use by a qualified*
- 17 *person to be used primarily in research and development.*

1 (3) *Tangible personal property purchased for use by a qualified*
2 *person to be used primarily to maintain, repair, measure, or test*
3 *any property described in paragraph (1) or (2).*

4 (4) *Tangible personal property purchased for use by a*
5 *contractor purchasing that property either as an agent of a*
6 *qualified person or for the contractor's own account and*
7 *subsequent resale to a qualified person for use in the performance*
8 *of a construction contract for the qualified person who will use*
9 *the tangible personal property as an integral part of the*
10 *manufacturing, processing, refining, fabricating, or recycling*
11 *process, or as a research or storage facility for use in connection*
12 *with the manufacturing process.*

13 *This exemption shall not apply to any tangible personal property*
14 *that is used primarily in administration, general management, or*
15 *marketing.*

16 (b) *For purposes of this section:*

17 (1) *"Fabricating" means to make, build, create, produce, or*
18 *assemble components or property to work in a new or different*
19 *manner.*

20 (2) *"Manufacturing" means the activity of converting or*
21 *conditioning property by changing the form, composition, quality,*
22 *or character of the property for ultimate sale at retail or use in*
23 *the manufacturing of a product to be ultimately sold at retail.*
24 *Manufacturing includes any improvements to tangible personal*
25 *property that result in a greater service life or greater functionality*
26 *than that of the original property.*

27 (3) *"Primarily" means tangible personal property used 50*
28 *percent or more of the time in an activity described in subdivision*
29 *(a).*

30 (4) *"Process" means the period beginning at the point at which*
31 *any raw materials are received by the qualified taxpayer and*
32 *introduced into the manufacturing, processing, refining,*
33 *fabricating, or recycling activity of the qualified taxpayer and*
34 *ending at the point at which the manufacturing, processing,*
35 *refining, fabricating, or recycling activity of the qualified taxpayer*
36 *has altered tangible personal property to its completed form,*
37 *including packaging, if required. Raw materials shall be considered*
38 *to have been introduced into the process when the raw materials*
39 *are stored on the same premises where the qualified taxpayer's*
40 *manufacturing, processing, refining, or recycling activity is*

1 conducted. Raw materials that are stored on premises other than
2 where the qualified taxpayer's manufacturing, processing, refining,
3 fabricating, or recycling activity is conducted, shall not be
4 considered to have been introduced into the manufacturing,
5 processing, refining, fabricating, or recycling process.

6 (5) "Processing" means the physical application of the materials
7 and labor necessary to modify or change the characteristics of
8 property.

9 (6) "Qualified person" means any person that is both of the
10 following:

11 (A) A new trade or business. In determining whether a trade or
12 business activity qualifies as a new trade or business, the following
13 rules shall apply:

14 (i) In any case where a person purchases or otherwise acquires
15 all or any portion of the assets of an existing trade or business
16 (irrespective of the form of entity) that is doing business in this
17 state (within the meaning of Section 23101), the trade or business
18 thereafter conducted by that person (or any related person) shall
19 not be treated as a new business if the aggregate fair market value
20 of the acquired assets (including, real, personal, tangible, and
21 intangible property) used by that person (or any related person)
22 in the conduct of his or her trade or business exceed 20 percent
23 of the aggregate fair market value of the total assets of the trade
24 or business being conducted by the person (or any related person).
25 For purposes of this subparagraph only, the following rules shall
26 apply:

27 (I) The determination of the relative fair market values of the
28 acquired assets and the total assets shall be made as of the last
29 day of the month following the quarterly period in which the person
30 (or any related person) first uses any of the acquired trade or
31 business assets in his or her business activity.

32 (II) Any acquired assets that constituted property described in
33 Section 1221(a) of the Internal Revenue Code in the hands of the
34 transferor shall not be treated as assets acquired from an existing
35 trade or business, unless those assets also constitute property
36 described in Section 1221(a) of the Internal Revenue Code in the
37 hands of the acquiring person (or related person).

38 (ii) In any case where a person (or any related person) is
39 engaged in one or more trade or business activities in this state,
40 or has been engaged in one or more trade or business activities

1 in this state within the preceding 36 months (“prior trade or
2 business activity”), and thereafter commences an additional trade
3 or business activity in this state, the additional trade or business
4 activity shall only be treated as a new business if the additional
5 trade or business activity is classified under a different division
6 of the Standard Industrial Classification Manual published by the
7 United States Office of Management and Budget, 1987 edition,
8 than are any of the person’s (or any related person’s) current or
9 prior trade or business activities in this state.

10 (iii) In any case where a person, including all related persons,
11 is engaged in trade or business activities wholly outside of this
12 state and that person first commences doing business in this state
13 (within the meaning of Section 23101) after December 31, 1993
14 (other than by purchase or other acquisition described in clause
15 (i)), the trade or business activity shall be treated as a new
16 business.

17 (iv) In any case where the legal form under which a trade or
18 business activity is being conducted is changed, the change in form
19 shall be disregarded and the determination of whether the trade
20 or business activity is a new business shall be made by treating
21 the person as having purchased or otherwise acquired all or any
22 portion of the assets of an existing trade or business under the
23 rules of clause (i).

24 (v) “Related person” means any person that is related to that
25 person under either Section 267 or 318 of the Internal Revenue
26 Code.

27 (vi) “Acquire” includes any gift, inheritance, transfer incident
28 to divorce, or any other transfer, whether or not for consideration.

29 (B) Engaged in those lines of business described in Codes 2011
30 to 3999, inclusive, of the Standard Industrial Classification Manual
31 published by the United States Office of Management and Budget,
32 1987 edition.

33 (7) Notwithstanding paragraph (6), “qualified person” shall
34 not include any person who has conducted business activities in
35 a new trade or business for three or more years.

36 (8) “Refining” means the process of converting a natural
37 resource to an intermediate or finished product.

38 (9) “Research and development” means those activities that
39 are described in Section 174 of the Internal Revenue Code or in
40 any regulations thereunder.

1 (10) “Tangible personal property” does not include any of the
2 following:

3 (A) Consumables with a normal useful life of less than one year,
4 except as provided in subparagraph (E) of paragraph (10).

5 (B) Furniture, inventory, equipment used in the extraction
6 process, or equipment used to store finished products that have
7 completed the manufacturing process.

8 (11) “Tangible personal property” includes, but is not limited
9 to, all of the following:

10 (A) Machinery and equipment, including component parts and
11 contrivances such as belts, shafts, moving parts, and operating
12 structures.

13 (B) All equipment or devices used or required to operate,
14 control, regulate, or maintain the machinery, including, without
15 limitation, computers, data processing equipment, and computer
16 software, together with all repair and replacement parts with a
17 useful life of one or more years therefor, whether purchased
18 separately or in conjunction with a complete machine and
19 regardless of whether the machine or component parts are
20 assembled by the taxpayer or another party.

21 (C) Property used in pollution control that meets or exceed
22 standards established by this state or any local or regional
23 governmental agency within this state.

24 (D) Special purpose buildings and foundations used as an
25 integral part of the manufacturing, processing, refining, or
26 fabricating process, or that constitute a research or storage facility
27 used during the manufacturing process. Buildings used solely for
28 warehousing purposes after completion of the manufacturing
29 process are not included.

30 (E) Fuels used or consumed in the manufacturing process.

31 (F) Property used in recycling.

32 (c) No exemption shall be allowed under this section unless the
33 purchaser furnishes the retailer with an exemption certificate,
34 completed in accordance with any instructions or regulations as
35 the board may prescribe, and the retailer subsequently furnishes
36 the board with a copy of the exemption certificate. The exemption
37 certificate shall contain the sales price of the machinery or
38 equipment that is exempt pursuant to subdivision (a).

39 (d) Notwithstanding any provision of the Bradley-Burns Uniform
40 Local Sales and Use Tax Law (Part 1.5 (commencing with Section

1 7200)) or the Transactions and Use Tax Law (Part 1.6
2 (commencing with Section 7251)), the exemption established by
3 this section shall not apply with respect to any tax levied by a
4 county, city, or district pursuant to, or in accordance with, either
5 of those laws.

6 (e) (1) Notwithstanding subdivision (a), the exemption provided
7 by this section shall not apply to any sale or use of property which,
8 within one year from the date of purchase, is either removed from
9 California or converted from an exempt use under subdivision (a)
10 to some other use not qualifying for the exemption.

11 (2) Notwithstanding subdivision (a), on or after January 1,
12 2011, the exemption established by this section shall not apply
13 with respect to any tax levied pursuant to Sections 6051.2, 6051.5,
14 6201.2, and 6201.5, or pursuant to Section 35 of Article XIII of
15 the California Constitution.

16 (f) If a purchaser certifies in writing to the seller that the
17 property purchased without payment of the tax will be used in a
18 manner entitling the seller to regard the gross receipts from the
19 sale as exempt from the sales tax, and within one year from the
20 date of purchase, the purchaser (1) removes that property outside
21 California, (2) converts that property for use in a manner not
22 qualifying for the exemption, or (3) uses that property in a manner
23 not qualifying for the exemption, the purchaser shall be liable for
24 payment of sales tax, with applicable interest, as if the purchaser
25 were a retailer making a retail sale of the property at the time the
26 property is so removed, converted, or used, and the sales price of
27 the property to the purchaser shall be deemed the gross receipts
28 from that retail sale.

29 (g) This section applies to leases of tangible personal property
30 classified as “continuing sales” and “continuing purchases” in
31 accordance with Sections 6006.1 and 6010.1. The exemption
32 established by this section shall apply to the rentals payable
33 pursuant to such a lease, provided the lessee is a qualified person
34 and the property is used in an activity described in subdivision
35 (a). Rentals that meet the foregoing requirements are eligible for
36 the exemption for a period of six years from the date of
37 commencement of the lease. At the close of the six-year period
38 from the date of commencement of the lease, lease receipts are
39 subject to tax without exemption.

- 1 *(h) This section shall cease to be operative on January 1, 2017,*
- 2 *and as of that date is repealed.*
- 3 SEC. 2. This act provides for a tax levy within the meaning of
- 4 Article IV of the Constitution and shall go into immediate effect.